LOZEAU DRURY LLP

T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 9, 2018

Liliana Ramirez
Steve Denison
C M C Steel Fabricators, Inc.
C M C Rebar Tracy Facility
120 W. Larch Road
Tracy, CA 95304

Liliana Ramirez
C M C Steel Fabricators, Inc.
P.O. Box 911
Seguin, TX 78156

Tracy L. Porter, Chief Executive Officer
C M C Steel Fabricators, Inc.
6565 N. Macarthur Blvd., Suite 800
Irving, TX 75039

C M C Steel Fabricators, Inc.
Legal Dept.
6565 N. Macarthur Blvd., Suite 800
Irving, TX 75039

VIA FIRST CLASS MAIL

CT Corporation System
Agent for Service of Process for
C M C Steel Fabricators, Inc.
818 W. 7th St., Suite 930
Los Angeles, CA 90017

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Mses. Porter and Ramirez and Mr. Denison:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at your industrial facility, identified as the CMC Rebar – Tracy facility, located at 120 W. Larch Road in Tracy, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Old River, Middle River, the Sacramento-San Joaquin Delta ("Delta"), Suisun Bay and other California waters. This letter is being sent to C M C Steel Fabricators, Inc., Tracy Porter, Liliana Ramirez, and Steve Denison as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "CMC").

This letter addresses CMC's unlawful discharge of pollutants from the Facility to the City of Tracy's municipal storm drain system which then flow to Old River and on into the Delta and

Suisun Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The Waste Discharger identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") and the State Board is 5S39I026434. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places CMC on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against CMC under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), CMC certifies that the Facility is classified under SIC Code 3499. The Facility collects and discharges storm water from its approximately 3 acre industrial site through at least five drop inlets which flow to one discharge location near the northwest corner of the Facility. The Facility discharges storm water to a municipal storm drain operated by the City of Tracy which conveys the Facility's stormwater discharges to Old River, Middle River, the Delta and Suisun Bay. CSPA is informed and believes that the Facility has been in operation under the current ownership since about 2000. During that entire period, the Facility has been subject to the Clean Water Act's stormwater control requirements. However, the Facility does not appear to have enrolled in the General Permit until July 2015. Accordingly, for many years, the Facility was discharging polluted stormwater illegally without an NPDES permit.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the San Joaquin River and its tributaries, and the Delta, in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial

uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." Basin Plan at II-1.00 – II-2.00. Visible pollution, including cloudy or muddy water from industrial areas, impairs people's use of the Old River, Middle River, and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and its tributaries and the Sacramento-San Joaquin River Delta. It includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life." *Id.* at III-8.01. It provides that "[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses." *Id.* at III-5.00. It provides that "[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses." *Id.* It provides that "[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at III-7.00. The Basin Plan requires that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at III-9.00. The Basin Plan also prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses." *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.*

Table III-1 of the Basin Plan establishes a water quality objective ("WQO") for iron of 0.3 mg/L and for zinc of 0.1 mg/L (with some variation based on the hardness of the receiving water).

The Basin Plain provides that "[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Tables 64449-A (Secondary Maximum Contaminant Levels-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Contaminant Levels-Ranges) of Section 64449." *Id.* at III-3.00. Table 64449-A provides Secondary MCLs ("SMCL") for iron of 0.3 mg/L. Table 64431-A provides a Primary MCL for aluminum of 1.0 mg/L and Table 64449-A provides a SMCL for aluminum of 0.2 mg/L.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology

economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[1] The following benchmarks have been established for pollutants discharged by CMC: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; aluminum – 0.75 mg/L; nitrate + nitrite as N – 0.68 mg/L; zinc – 0.11 - 0.2 mg/L;[2] and iron – 1.0 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; aluminum – 0.75 mg/L; nitrate + nitrite as N – 0.68 mg/L; zinc – 0.11 - 0.2 mg/L; and iron – 1.0 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

The State of California maintain a listed of impaired waterways pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d). Old River is included on the impaired waters list. Old River is identified as impaired by chlorpyrifos, electrical conductivity, low dissolved oxygen, and total dissolved solids. Discharges of pollutants in storm water from the facility include pollutants that contribute some of these impairments, including electrical conductivity, low dissolved oxygen, and total dissolved solids.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

CMC has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

---

[1] The Benchmark Values can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

[2] The benchmark for zinc depends upon the hardness of the water. CSPA is informed and believes that hardness measured in Old River ranges from about 90 to 270 mg/L as $CaCO_3$.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

CMC has discharged and continues to discharge storm water with unacceptable levels of TSS, aluminum, nitrate + nitrite, zinc, iron, and oil & grease in violation of the General Permit. CMC's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	**Parameter**	**Observed Concentration/ Conditions**	**Basin Plan Water Quality Objective / CTR**	**Outfall (as identified by the Facility)**
3/21/2017	Aluminum	1.3 mg/L	1 mg/L (Primary MCL); 0.2 mg/L (SMCL)	East Drain
3/21/2017	Aluminum	0.56 mg/L	0.2 mg/L (SMCL)	West Drain
1/10/2017	Aluminum	0.158 mg/L	0.2 mg/L (SMCL)	West Drain
10/27/2016	Aluminum	5.79 mg/L	1 mg/L (Primary MCL); 0.2 mg/L	West Drain

			(SMCL)	
10/27/2016	Aluminum	0.806 mg/L	0.2 mg/L (SMCL)	East Drain
3/21/2017	Iron	3.19 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	East Drain
3/21/2017	Iron	0.875 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	West Drain
1/10/2017	Iron	0.26 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	West Drain
10/27/2016	Iron	9.5 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	West Drain
10/27/2016	Iron	1.72 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	East Drain
4/9/2016	Iron	1.01 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	West Drain
4/9/2016	Zinc	0.404 mg/L	0.1 mg/L (WQO)	West Drain
4/9/2016	Zinc	0.19 mg/L	0.1 mg/L (WQO)	East Drain

The information in the above table reflects data gathered from CMC's self-monitoring during the 2015-2016 and 2016-2017 reporting years. The Facility failed to enroll under the General Permit prior to July 2015 and failed to conduct any monitoring prior to the fall of 2015. Nevertheless, the Facility was obligated to obtain coverage under the General Permit and comply with the receiving water limitations. CSPA alleges that since at least March 9, 2013, and continuing through today, CMC has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- Iron – 0.3 mg/L (WQO and SMCL)
- Aluminum – 1 mg/L (Primary MCL)
- Aluminum – 0.2 mg/L (SMCL)
- Zinc – 0.1 mg/L (WQO)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	**Parameter**	**Observed Concentration**	**EPA Benchmark Value /Annual NAL**	**Outfall (as identified by the Facility)**
3/21/2017	Aluminum	1.3 mg/L		East Drain
3/21/2017	Aluminum	0.56 mg/L		West Drain

1/10/2017	Aluminum	ND		East Drain
1/10/2017	Aluminum	0.158 mg/L		West Drain
10/27/2016	Aluminum	5.79 mg/L		West Drain
10/27/2016	Aluminum	0.806 mg/L		East Drain
2016-2017 Annual Average:	Aluminum	1.44 mg/L	0.75	All
4/9/2016	Aluminum	2.58 mg/L		West Drain
4/9/2016	Aluminum	0.325 mg/L		West Drain
2015-2016 Annual Average:	Aluminum	1.5 mg/L	0.75	All
3/21/2017	Iron	3.19 mg/L		East Drain
3/21/2017	Iron	0.875 mg/L		West Drain
1/10/2017	Iron	0.108 mg/L		East Drain
1/10/2017	Iron	0.26 mg/L		West Drain
10/27/2016	Iron	9.5 mg/L		West Drain
10/27/2016	Iron	1.72 mg/L		East Drain
2016-2017 Annual Average:	Iron	2.61 mg/L	1.0 mg/L	All
4/9/2016	Zinc	0.404 mg/L		West Drain
4/9/2016	Zinc	0.19 mg/L		East Drain
2015-2016 Annual Average:	Zinc	0.404 mg/L	0.26 mg/L	All
2/21/2017	Nitrate + Nitrite as N	0.195 mg/L		East Drain
2/21/2017	Nitrate + Nitrite as N	0.199 mg/L		West Drain
1/10/2017	Nitrate + Nitrite as N	0.338 mg/L		East Drain
1/10/2017	Nitrate + Nitrite as N	0.328 mg/L		West Drain
10/27/2016	Nitrate + Nitrite as N	3.84 mg/L		West Drain
10/27/2016	Nitrate + Nitrite as N	8.553 mg/L		East Drain
2016-2017 Annual Average:	Nitrate + Nitrite as N	2.28 mg/L	0.68 mg/L	All
4/9/2016	Nitrate + Nitrite as N	1.73 mg/L		West Drain
4/9/2016	Nitrate + Nitrite as N	3.94 mg/L		East Drain
2015-2016	Nitrate + Nitrite as N	2.84 mg/L	0.68 mg/L	All

Annual Average:				
3/21/2017	Total Suspended Solids	320 mg/L		East Drain
3/21/2017	Total Suspended Solids	88 mg/L		West Drain
1/10/2017	Total Suspended Solids	320 mg/L		East Drain
1/10/2017	Total Suspended Solids	220 mg/L		West Drain
10/27/2016	Total Suspended Solids	330 mg/L		West Drain
10/27/2016	Total Suspended Solids	92 mg/L		East Drain
2016-2017 Annual Average:	Total Suspended Solids	228.33 mg/L		All
4/9/2016	Total Suspended Solids	170 mg/L		West Drain
4/9/2016	Total Suspended Solids	77 mg/ L		East Drain
2015-2016 Annual Average:	Total Suspended Solids	124 mg/L	100 mg/L	All
4/9/2016	Oil & Grease	14.6 mg/L		West Drain
4/9/2016	Oil & Grease	16.2 mg/L		East Drain
2015-2016 Annual Average:	Oil & Grease	15.4 mg/L	15 mg/L	All

The information in the above table reflects data gathered from CMC's self-monitoring during the 2015-2016 and 2016-2017 reporting years. CSPA notes that CMC's sampling results from the 2015-2016 reporting year placed the Facility in Level 1 Status pursuant to the General Permit. The additional NAL violations in 2016-2017 placed the Facility in Level 2 Status. CSPA alleges that since at least March 9, 2013, CMC has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for aluminum, nitrate + nitrite, TSS, oil & grease, zinc and iron.

CSPA's investigation, including its review of CMC's Storm Water Pollution Prevention Plan ("SWPPP"), CMC's Level 1 and Level 2 ERA Reports, CMC's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that CMC has not implemented BAT and BCT at the Facility for its discharges of aluminum, nitrate + nitrite, TSS, oil & grease, zinc and iron, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. CMC was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, CMC is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since March 9, 2013, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that CMC has discharged storm water containing impermissible and unauthorized levels of aluminum, nitrate + nitrite, TSS, oil & grease, zinc and/or iron in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[3]

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of aluminum, nitrate + nitrite, TSS, oil & grease, zinc and/or iron, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CMC is subject to penalties for violations of the General Permit and the Act since March 9, 2013.

B. Failure to Conduct Sampling and Analysis.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

[3] The rain dates on the attached table are all the days when rain was measured at a weather station in Tracy in close proximity to the Facility or samples were taken of stormwater discharging from the facility. The data was accessed via https://www.ncdc.noaa.gov/cdo-web/ (Last accessed on March 7, 2018).

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit shortens the preceding no discharge period to 48 hours. *See* 2015 Permit, § XI(B)(1). Samples must be collected from each drainage area at all discharge locations and be representative of storm water associated with the Facility's industrial activity and any commingled discharges. *See* 2015 Permit, § XI(B)(4); *see also* 1997 Permit § B(5)(a). "The Discharger shall collect and analyze storm water samples from two (2) [qualifying storm events] QSEs within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30). 2015 Permit, XI.B.2. A discharger must submit the sampling and analytical results to the State Board's SMARTs database "within 30 days of obtaining all results for each sampling event." 2015 Permit, XI.B.11.a.

Because CMC failed to enroll in the General Permit until July 2015, CMC failed to collect any storm water samples from the facility for the 2013-2014 and 2014-2015 rainy seasons. By failing to enroll in the General permit and failing to obtain storm water samples, CMC violated Sections 301(a) and 402 by discharging pollutants from a point source without obtaining a NPDES permit. The failure to obtain a permit and gather representative storm water samples and testing results for the Facility for the 2013-2014 and 2014-2015 rain years continues to this day to deprive CSPA and its members of information and pollution data that the Facility was required to obtain under the Clean Water Act.

On information and belief, CSPA alleges that during the 2015-2016 reporting year, CMC failed to collect and analyze storm water samples from three of the requisite four storm events. CSPA alleges that local precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during that wet season on which the Facility was open. Specifically, CSPA alleges that discharges occurred on the following dates where discharges occurred but a storm water sample was not taken at the Facility:

- October 1, 2015
- November 2, 2015
- November 9, 2015
- November 15, 2015
- December 11, 2015
- December 14, 2015
- December 22, 2015
- December 28, 2015
- January 5, 2016
- January 16, 2016
- January 23, 2016
- January 30, 2016
- February 18, 2016
- March 5, 2016
- April 9, 2016
- May 7, 2016

Because CMC failed to take three of the four requisite water samples for the entire 2015-2016 reporting year, CMC has violated the General Permit's monitoring requirement for that entire period, amounting to at least 365 violations of the Act. These violations of the General Permit are ongoing. CMC is subject to penalties for each of those daily violations of the General Permit and the Act's monitoring and sampling requirements.

On information and belief, CSPA alleges that during the 2016-2017 reporting year, CMC failed to collect and analyze storm water samples from a fourth storm event. CSPA alleges that local precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during that wet season on which the Facility was open. Specifically, CSPA alleges that discharges occurred on the following dates where discharges occurred but a storm water sample was not taken at the Facility:

- October 15, 2016
- October 29, 2016
- November 20, 2016
- November 27, 2016
- December 8, 2016
- December 11, 2016
- December 16, 2016
- December 24, 2016
- January 3, 2017
- January 19, 2017
- March 5, 2017

- March 21, 2017
- April 7, 2017
- April 17, 2017

Because CMC failed to take one of the four requisite water samples for the entire 2016-2017 reporting year, CMC has violated the General Permit's monitoring requirement for that entire period, amounting to at least 365 violations of the Act. These violations of the General Permit are ongoing. CMC is subject to penalties for each of those daily violations of the General Permit and the Act's monitoring and sampling requirements.

CMC has failed to submit any storm water sampling results for the 2017-2018 reporting season. At a minimum, at least two samples from the end of the 2017 should have been posted to SMARTs as of the date of this notice letter. CMC had at least three occasions to take the required samples during qualifying rain events on November 14, 2017, November 17, 2017, and November 27, 2017. Similarly, at least two qualifying rain events have passed on January 4, 2018 and January 8, 2018 which CSPA is informed and believes produced storm water discharges at the Facility yet no sampling results have been posted on SMARTs for those qualifying events. At a minimum, CMC has violated the 2015 Permit's requirement that the Facility take two samples during the first half of each reporting year (July 1 to December 31) and/or to submit sample results to SMARTs within 30-days. CSPA also believes that CMC likely will violate the same requirements applicable to the second half of the 2017-2018 reporting year (January 1 to June 30). 2015 Permit, XI.B.2.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as one of the cornerstones of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of

significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be sufficiently robust to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Despite these SWPPP and BMP requirements, CMC has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP must include a Monitoring Implementation Plan. That portion of the SWPPP is required to include "[a] description of the following in accordance with Attachment H: a. Discharge locations...." 2015 Permit, § X.I.2.a. The Monitoring Implementation Plan also must include "[j]ustifications for any of the following that are applicable to the facility: a. Alternative discharge locations in accordance with Section XI.C.3...." 2015 Permit, § X.I.3.a. The SWPPP's description of sampling locations is inconsistent with the sample locations actually utilized at the Facility. According to the SWPPP, the main sampling location for the Facility is SP#1, a

manhole at the northwest corner of the Facility. The SWPPP also identifies an alternative sampling location as SP#2 described as a "[d]rop inlet west of the Offices and Outdoor Storage year" at the Facility. Neither of these two identifiers are referenced in any of the sampling reports submitted by CMC for the Facility. Instead, the sample locations are identified as "West Drain" or "East Drain." As a result, the SWPPP has failed to describe the locations of discharges sampled by the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit. CMC has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges consistent with the BAT and BCT requirements. Despite these exceedances, CMC has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges consistent with reductions achieved by implementing BAT and BCT at the Facility.

CSPA puts CMC on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. CMC is subject to civil penalties for all violations of the CWA occurring since March 9, 2013.

D. Failure to Comply with 2015 Permit Evaluation and ERA Requirements

On or about December 28, 2016, CMC submitted an "Exceedance Response Action Evaluation and Report Level One" to the State Board's SMARTs system. The ERA Report and Level 1 status are triggered by exceedances of the NALs adopted in the 2015 General Permits. The ERA Level 1 report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." 2015 Permit, § VII.C.1.c.

CMC's ERA Level 1 report addresses the Facility's exceedance of the NAL for TSS, aluminum, zinc, nitrate + nitrite, and iron during the 2015-2016 reporting year. Although the report identifies these NAL exceedances, CMC failed to identify BMPs necessary to prevent future NAL exceedances or to comply with BAT/BCT requirement of permit. The ERA Level 1

Report identifies two additional BMPs for all of these NAL exceedances. By October 2016, the Facility states it will "[u]se tarp to cover scrap bins when not in use and prior to a rain event" and "[s]chedule additional training on housekeeping procedures & [s]chedule monthly yard sweeping by an outside sweeper." Neither of these two measures identified in the ERA could have achieved, and indeed did not achieve, the applicable NALs for these pollutants.

If a discharger exceeds an applicable NAL during Level 1 Status, it is then elevated to "Level 2 Status." 2015 Permit, ¶ XII.D. For Level 2 Status, a discharger is required to submit, by January 1 following commencement of Level 2 status, a Level 2 ERA Action Plan requiring a demonstration of either additional BMPs to prevent NAL exceedances, a determination that the NAL exceedance is solely due to non-industrial pollutant sources, or a determination that the exceedance is solely due to the presence of the pollutant in the natural background. ¶ XII.D.1.a. All elements of the Level 2 ERA Action Plan shall be implemented as soon as practicable and completed no later than 1 year after submitting the Level 2 ERA Action Plan. 2015 Permit, ¶ XII.D.1.d.

On January 1 of the reporting year following the submittal of the Level 2 ERA Action Plan, a discharger with Level 2 must prepare, certify and submit to SMARTS a Level 2 ERA Technical Report. 2015 Permit, ¶ XII.D.2. Unless it is demonstrated that either nonindustrial sources or background sources are the sole cause of the NAL exceedance, the Level 2 ERA Technical Report must include a description of the industrial pollutant sources and corresponding industrial pollutants that are or may be related to each NAL exceedance; an evaluation of all pollutant sources associated with industrial activity that are or may be related to each NAL exceedance; and a description and analysis of all implemented BMPs that achieve compliance with the effluent limitations of this General Permit and are expected to eliminate future NAL exceedances. 2015 Permit, ¶ XII.D.2.a.iii. When a discharger implements BMPs which they believe will achieve compliance with the effluent limitations of this General Permit but are not expected to eliminate future NAL exceedances, the discharger shall provide, in addition 1) an evaluation of any additional BMPs that would reduce or prevent NAL exceedances; 2) estimated costs of the additional BMPs evaluated; and, 3) an analysis describing the basis for the selection of BMPs implemented in lieu of the additional BMPs evaluated but not implemented. 2015 Permit, ¶ XII.D.2.a.iv.

Because the two BMPs identified in the ERA Level 1 report did not eliminate the exceedances of NALs, CMC was required to prepare an ERA Level 2 report which was submitted to the State Board on or about December 29, 2017. The ERA Level 2 report includes one additional BMP: "Install additional drain filters in the storm drains to capture TSS."

The ERA Level 2 report must provide a description and analysis of all implemented BMPs that achieve compliance with the effluent limitations of this General Permit and are expected to eliminate future NAL exceedance(s). 2015 Permit, ¶ XII.D.2.a.iii. CMC's ERA Level 2 report does not analyze whether some additional drain filters will achieve NALs. The report does not identify what type of filters were installed. In general, such in-drain filters are

incapable of consistently reducing heavy metals, TSS and nitrate at levels observed at the Facility to NAL levels.

This additional measure, even when combined with the previous measures, will not achieve all of the NALs exceeded by the Facility. The ERA Level 2 report fails to evaluate other obvious additional BMPs that would likely reduce pollutants in the Facility's discharges to achieve compliance with the relevant NALs. These would include complete containment; active treatment using, for example, equipment designed and sold by a number of existing vendors, or partial containment coupled with active treatment. The Facility also could consider enclosing much more of the Facility with roofing preventing exposure of pollution source areas to storm water. None of these BMPs capable of meeting the NALs is considered by the ERA Level 2 report, including the required consideration of their effectiveness and estimated costs, and CMC's basis for selecting what appear to be the least effective and cheapest alternatives for the Facility. 2015 Permit, ¶ XII.D.2.a.iv.

Although "[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances." Fact Sheet, p. 60. *See* 2015 Permit, Finding 53 ("A Discharger that does not fully comply with the Level 1 status and/or Level 2 status ERA requirements, when required by the terms of this General Permit, is in violation of this General Permit"). Accordingly, CSPA puts CMC on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without adequate Level 1 and Level 2 ERA Reports for TSS, nitrate + nitrite, zinc, aluminum, and iron. These violations are ongoing. CMC is subject to civil penalties for each day it has failed to submit an adequate Level 1 ERA Report. CMC is subject to civil penalties for each day it has failed to submit an adequate Level 2 ERA Report.

III. Persons Responsible for the Violations.

CSPA puts CMC, Tracy Porter, Liliana Ramirez, and Steve Denison on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts CMC, Tracy Porter, Liliana Ramirez, and Steve Denison on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204

Tel. (209) 464-5067
deltakeep@me.com

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Rebecca L. Davis
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
michael@lozeaudrury.com
rebecca@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects HP Hood to a penalty of up to $37,500 per day per violation for all violations occurring since January 11, 2013, up to and including November 2, 2015, and up to $51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against CMC and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Michael R. Lozeau
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

SERVICE LIST – via certified mail

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jefferson B. Sessions III, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A
Rain Dates, CMC, Tracy, CA

3/8/2013	11/20/2014	11/2/2015
3/20/2013	11/21/2014	11/3/2015
3/31/2013	11/23/2014	11/9/2015
4/1/2013	11/29/2014	11/10/2015
4/4/2013	12/1/2014	11/15/2015
4/8/2013	12/2/2014	11/25/2015
6/24/2013	12/3/2014	12/4/2015
6/25/2013	12/4/2014	12/10/2015
9/22/2013	12/6/2014	12/11/2015
11/20/2013	12/8/2014	12/14/2015
11/21/2013	12/10/2014	12/19/2015
12/7/2013	12/12/2014	12/21/2015
1/30/2014	12/13/2014	12/22/2015
2/3/2014	12/15/2014	12/24/2015
2/6/2014	12/16/2014	12/25/2015
2/7/2014	12/17/2014	12/28/2015
2/8/2014	12/18/2014	1/4/2016
2/9/2014	12/20/2014	1/5/2016
2/10/2014	12/21/2014	1/6/2016
2/26/2014	12/25/2014	1/7/2016
2/27/2014	1/19/2015	1/9/2016
2/28/2014	1/25/2015	1/13/2016
3/1/2014	2/4/2015	1/15/2016
3/3/2014	2/7/2015	1/16/2016
3/4/2014	2/8/2015	1/18/2016
3/6/2014	2/9/2015	1/19/2016
3/26/2014	3/3/2015	1/20/2016
3/27/2014	3/11/2015	1/22/2016
3/30/2014	3/12/2015	1/23/2016
4/1/2014	3/23/2015	1/30/2016
4/2/2014	4/6/2015	1/31/2016
4/4/2014	4/7/2015	2/1/2016
4/5/2014	4/8/2015	2/2/2016
4/25/2014	4/22/2015	2/3/2016
4/26/2014	4/23/2015	2/18/2016
9/25/2014	4/24/2015	3/5/2016
9/26/2014	4/25/2015	3/6/2016
9/27/2014	5/8/2015	3/7/2016
11/1/2014	5/15/2015	3/8/2016
11/13/2014	6/10/2015	3/12/2016
11/14/2014	6/11/2015	3/13/2016
11/19/2014	10/1/2015	3/14/2016

ATTACHMENT A

Rain Dates, Concrete, Inc., Stockton, California

3/21/2016	1/23/2017	1/8/2018
3/22/2016	1/24/2017	1/9/2018
3/29/2016	2/2/2017	1/10/2018
4/9/2016	2/3/2017	1/19/2018
4/10/2016	2/4/2017	1/22/2018
4/14/2016	2/6/2017	1/23/2018
4/23/2016	2/7/2017	1/25/2018
4/28/2016	2/8/2017	1/26/2018
5/6/2016	2/10/2017	2/23/2018
5/7/2016	2/11/2017	2/27/2018
5/8/2016	2/16/2017	3/1/2018
10/15/2016	2/17/2017	3/2/2018
10/17/2016	2/18/2017	3/3/2018
10/25/2016	2/19/2017	3/4/2018
10/27/2016	2/20/2017	
10/28/2016	2/21/2017	
10/29/2016	2/22/2017	
11/20/2016	3/5/2017	
11/21/2016	3/6/2017	
11/27/2016	3/21/2017	
12/8/2016	3/22/2017	
12/11/2016	3/23/2017	
12/16/2016	3/25/2017	
12/24/2016	4/7/2017	
1/1/2017	4/8/2017	
1/3/2017	4/9/2017	
1/4/2017	4/13/2017	
1/5/2017	4/17/2017	
1/7/2017	4/18/2017	
1/8/2017	4/19/2017	
1/9/2017	4/20/2017	
1/10/2017	10/20/2017	
1/11/2017	11/9/2017	
1/12/2017	11/14/2017	
1/13/2017	11/17/2017	
1/19/2017	11/27/2017	
1/20/2017	12/20/2017	
1/21/2017	1/4/2018	
1/22/2017	1/6/2018	